

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

LEROY SINGLETON,

Plaintiff,

V.

BOB FERGUSON,

Defendant.

CASE NO. C14-0756JLR

ORDER ADOPTING REPORT AND RECOMMENDATION

Before the court is the Report and Recommendation (“R&R”) of Magistrate Judge

Brian A. Tsuchida (R&R (Dkt. # 3)) and Petitioner Leroy Singleton's objections thereto

(Objections (Dkt. # 4)). This is a habeas corpus case. On May 20, 2014, Mr. Singleton

filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Petition (Dkt. # 1).)

filed a petition for writ of habeas corpus under 28 U.S.C. § 2254. (Petition (Dkt. # 1).)

In the petition, he challenges the constitutionality of his December, 2005, state court

conviction for assault in the second degree with a deadly weapon. (*See id.* at 6-7.) He

has already served his sentence for this conviction but continues to be subject to an

ongoing financial responsibility arising therefrom. (See *id.* at 2-3.)

1 On May 22, 2014, Magistrate Judge Brian Tsuchida issued an R&R
2 recommending that the court transfer this petition to the Ninth Circuit Court of Appeals.
3 Under Ninth Circuit Rule 22-3(a), a second or successive § 2254 motion must be
4 transferred to the Ninth Circuit:

5 Any petitioner seeking leave to file a second or successive 2254 petition
6 or 2255 motion in district court must seek leave under 28 U.S.C. §§ 2244 or
7 2255. . . . If a second or successive petition or motion, or application for
leave to file such a petition or motion, is mistakenly submitted to the
district court, the district court shall refer it to the court of appeals.

8 Ninth Circuit Rule 22-3(a); 28 U.S.C. 2244(b)(3)(A). Magistrate Judge Tsuchida
9 recommended that this petition be transferred to the Ninth Circuit because, as Mr.
10 Singleton admits, this is his second § 2254 petition regarding this conviction. (R&R at 2-
11 3.)

12 Mr. Singleton's objections to the R&R do not raise any new or novel points that
13 suggest a different course of action is warranted. Indeed, Mr. Singleton admits that "it
14 does appears [sic] that Petitioner's current 2254-petition is a second or successive 2254-
15 petition that needs the Ninth Circuit's approval to be file [sic] in this Court for purpose of
16 28 U.S.C. § 2244" (Objections at 3.) Instead, he suggests that there are "additional
17 facts" that Magistrate Judge Tsuchida did not consider, and that given these facts the
18 court should deviate from the ordinary procedure set forth in Ninth Circuit Rule 22-3(a)
19 and 28 U.S.C. 2244(b)(3)(A). (*See id.* at 3-4.) Mr. Singleton's "additional facts" consist
20 of arguments for why the Ninth Circuit should grant leave to file a second or successive
21 petition. (*Id.* at 2-4.) They do not provide any authority, evidence, or argument that
22 suggest it would be appropriate for the court to consider a second or successive petition

1 or, for that matter, to consider a request for leave to file such a petition when the rules
2 assign that task to the Ninth Circuit.

3 Accordingly, the court ADOPTS the R&R in its entirety and TRANSFERS Mr.
4 Singleton's petition to the Ninth Circuit for consideration as a second or successive
5 petition. The court DIRECTS the clerk to send copies of this order to Petitioner and to
6 Magistrate Judge Tsuchida, and to transfer the case to the Ninth Circuit Court of Appeals.

7 Dated this 2nd day of July, 2014.

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JAMES L. ROBART
United States District Judge